

REMARKS

Claims 8-10, 14, 15 and 22-31 are pending in the application. Claims 8-10, 14, 15 and 22-32 have been rejected.

Amendment

Claim 32 is cancelled without prejudice in order to expedite prosecution.

Rejections under 35 U.S.C. 112

Claim 32 has been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

This claim has been cancelled without prejudice in order to expedite prosecution, thereby rendering this rejection moot.

Rejections under 35 U.S.C. 102 and 103

Claims 10, 26 and 30-32 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Plank et al (2004/0180129) or Plank et al (7,105,195, cols. 4-7) as being set forth in paragraph no. 9, Paper No. 091506.

With respect to Plank et al (2004/0180129), Applicants submitted a statement to establish common ownership of the reference and the subject application in the response filed January 11, 2007. See page 7 of the response. The undersigned (who also signed the response filed January 11, 2007) is an attorney of record in the present application. See the Declaration and Power of Attorney of record in the present application. It is respectfully submitted that this statement conforms with the direction provided in MPEP 706.02 (II), which is titled "EVIDENCE REQUIRED TO ESTABLISH COMMON OWNERSHIP." This statement therefore provides the factual evidence required to establish common ownership at the time the invention was made. Withdrawal of this rejection is therefore earnestly solicited.

The rejection under 35 U.S.C. 103(a) as being unpatentable over Plank et al (7,105,195) is a new ground of rejection.

Applicants hereby state that the subject matter of Plank 7,105,195 and of the presently claimed invention were, at the time the claimed invention was made, subject to an obligation of assignment to the same person. This reference therefore is not available for use under 35 U.S.C. 103 in view of 35 U.S.C. 103 (c)(1). Applicants therefore respectfully request withdrawal of this rejection.

Claims 8, 9, 14, 15, 22-25 and 27-29 have been rejected under 35 U.S.C. 102(e) as being clearly anticipated by Plank et al (7,105,195, cols. 4-7; hereafter "Plank '195").

Plank '195 describes uses of cyclodextrins either separately or in combination with beta glucans, to reduce trans fat levels in food products and food intermediates, as well as to enhance the hypocholesterolemic and hypocaloric benefit either individually or synergistically with other components. In the invention described therein, hydrated cyclodextrins (alpha, beta and/or gamma and/or combinations thereof) or beta-glucan are added to oil or fat, resulting in gelling or thickening of the oil or fat. See column 4, lines 22-25. The specification states that

it has been found that by processing oil in the presence of hydrated cyclodextrins (alpha, beta and/or gamma), the fatty acids of the triglycerides in the oil are sequestered in the hydrophobic binding pocket of the cyclodextrin yielding a fat with increased molecular weight and the ability to form intermolecular hydrogen bonds through the hydroxyls on the outside surface of the cyclodextrin ring.

See column 6, lines 21-28.

However, the present invention operates by a mutually exclusive mechanism with respect to the operation of the Plank '195 invention. As noted in the present specification at paragraphs [0019] and [0035], the present invention operates by sequestering the starting materials that form acrylamides during heating in the hydrophobic binding pocket of cyclodextrin. Thus, the surprising ability to prevent acrylamide formation in foods through topical application requires that the hydrophobic

form acrylamides, and not be filled with the fatty acids of the triglycerides in the oil prior to topical application as would inevitably occur by following the Plank '195 disclosure.

It is therefore respectfully submitted that Plank '195 cannot anticipate the present method claims.

Claims 8-10, 14, 15, 22-25, 27-29 and 30-32 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Zyzak et al (2004/010607, Abstract and page 4).

The present invention relates to a method of prevention of formation of acrylamide in heat treated food products by topically applying a composition containing a cyclodextrin to a food product or food intermediate in an amount effective to prevent formation of acrylamide during heating, and subjecting the food product or food intermediate to heating of at least 100°C.

Zyzak describes a method for reducing the level of asparagine in a food material. In the embodiment related to cyclodextrins, the method comprises extracting at least a portion of the asparagine from the food material before heating. See paragraph [0007]. In this extraction technique, the food material is contacted with solvent such that at least a portion of the asparagine is removed. The preferred solvent is water. See paragraph [0039]. The solvent is then treated by pumping the solvent through a column containing an adsorbent that is selective for asparagine, thereby removing the asparagine. Thus, the process described by Zyzak requires extraction to remove the asparagine from the food product using an adsorption process that takes place physically remote from the food product. Zyzak does not contemplate topical application of cyclodextrin to the food product, because such topical application does not extract or remove the asparagine from the food *per se*.

The skilled artisan would have had no reason to alter the process disclosed in Zyzak from an extraction process to remove asparagine from the food product to a topical application of cyclodextrin as presently claimed that does not physically remove the asparagine from the food product.

It is therefore respectfully submitted that the present claims are not obvious in view of Zyzak.

Conclusion

In view of the amendments and remarks provided herein, Applicants respectfully submit that all of the pending claims are in condition for allowance, and respectfully request notification thereof.

In the event that a phone conference between the Examiner and the Applicants' undersigned attorney would help resolve any remaining issues in the application, the Examiner is invited to contact the attorney at (651) 275-9811.

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